

GARMAN TURNER GORDON LLP
GERALD M. GORDON
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
JARED M. SECHRIST
Nevada Bar No. 10439
E-mail: jsechrist@gtg.legal
7251 Amigo St., Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000 / Fax: (725) 777-3112

*Attorneys for Tecumseh–Infinity Medical
Receivable Fund, LP*

MICHAEL D. NAPOLI, ESQ.
Pro hac vice
AKERMAN LLP
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201
Tel: (214) 720-4360 / Fax: (214) 720-8116
Email: michael.napoli@akerman.com

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Tel: (702) 634-5000 / Fax: (702) 380-8572
Email: ariel.stern@akerman.com

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

INFINITY CAPITAL MANAGEMENT, INC.

Debtor.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Plaintiff,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Defendant.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Claimant,

v.

Case No.: 21-14486-abl
Chapter 7

Adversary Case No. 21-01167-abl

**TECUMSEH–INFINITY MEDICAL
RECEIVABLE FUND, LP MOTION TO
FILE DOCUMENTS UNDER SEAL**

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Defendant.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Claimant

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

MOTION TO FILE DOCUMENTS UNDER SEAL

Tecumseh–Infinity Medical Receivable Fund, LP (“Tecumseh”), through counsel, respectfully submits this Motion to File Documents Under Seal (the “Motion”) sealing leave to file under seal the binders (“Binders”) identified in Tecumseh’s Statement of Undisputed Facts [ECF No. 92] as Exhibit I submitted in support of its Motion for Partial Summary Judgment (“MPSJ”) as to Direct Purchase Receivables [ECF No. 90]. The Binders contain—and, in fact, the information contained within them consists almost entirely of—the personal identifying information and information protected from disclosure by HIPAA for non-parties. They should, therefore, be sealed in the record.

This Motion is made and based upon the following Memorandum of Points and Authorities, the Declaration of Michael Napoli attached hereto as **Exhibit A**, the pleadings, papers, and other records on file with the clerk of the above-captioned Court, judicial notice of which is hereby requested pursuant to Federal Rule of Evidence 201, and any argument of counsel at the time of the hearing (if any) on the Motion.

I. STATEMENT OF FACTS

1. This action derives from a dispute between HASElect-Medical Receivables Litigation Finance Fund International SP (“HASElect”) and Tecumseh concerning their respective interests in certain medical receivables (“Receivables”) identified in the MPSJ. *See* MPSJ at 3-4.

2. The Receivables typically arose from medical treatment provided to individuals (“Patients”) injured in accidents who then asserted personal injury claims arising from the accidents. *Id.* at 4.

3. The Patients are not parties to this litigation.

4. On August 10, 2022, Infinity Capital Management, Inc. (“Debtor”) advised Tecumseh of the existence of five binders (“Binders”) containing, among other things, Healthcare Finance Administration forms (“HCFA Forms”) relating to the Patients. Ex. A ¶ 3. Tecumseh acquired the Binders from Infinity shortly thereafter. *Id.*

5. In addition to the HCFA Forms, the Binders contain documents with information concerning the Patients’ medical history and treatment. *Id.* ¶ 4; *see, e.g.* Ex. E to the MPSJ.

6. On August 26, 2022, Tecumseh filed the MPSJ, identifying the Binders as Exhibit I. Tecumseh advised the Court in the Statement of Undisputed Facts in support of the MPSJ that it would file the present Motion seeking leave to file Exhibit I under seal.

II. JURISDICTION AND VENUE

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is FRBP 9037(c).

III. ARGUMENT

Federal Rule of Bankruptcy Procedure 9037(c) provides that the Court may seal documents under certain circumstances, stating “The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.” Here, the information contained in the Binders suggests the Court should exercise its discretion pursuant to Rule 9037(c) to seal the Binders.

First, the Patients are not parties to this lawsuit. They have not consented, either impliedly or expressly, to their personal identifying information or information pertaining to their medical conditions and treatments being placed in the public record. Accordingly, their interests should be

1 afforded greater protection than might be afforded a party.

2 Second, Nevada and federal law suggest Patient's information contained in the Binders should
3 be afforded special privacy considerations, such as sealing. NRS Ch. 603A (Security and Privacy of
4 Personal Information) mandates confidential treatment of certain personal identifying information
5 ("PII") and defines Personal Information, which requires the proscribed confidential treatment, as:

6 [A] natural person's first name or first initial and last name in
7 combination with any one or more of the following data elements,
8 when the name and data elements are not encrypted:

9 (a) Social security number.

10 (b) Driver's license number, driver authorization card
11 number or identification card number.

12 (c) Account number, credit card number or debit card
13 number, in combination with any required security code,
14 access code or password that would permit access to the
15 person's financial account.

16 (d) A medical identification number or a health insurance
17 identification number.

18 (e) A user name, unique identifier or electronic mail address
19 in combination with a password, access code or security
20 question and answer that would permit access to an online
21 account.

22 2. The term does not include the last four digits of a social security
23 number, the last four digits of a driver's license number, the last four
24 digits of a driver authorization card number or the last four digits of
25 an identification card number or publicly available information that
26 is lawfully made available to the general public from federal, state
27 or local governmental records.

28 NRS 603A.040. Similarly, the Health Insurance Portability and Accountability Act (42 U.S.C. §§ 1301
29 *et seq.*) ("HIPAA") also mandates that the Patients' protected health information, which is also
30 contained in the Binders, be kept confidential under certain circumstances. *See* 45 C.F.R. § 164.514(b).
31 Although HIPAA may not independently mandate sealing the Binders under the circumstances of this
32 case, it is a powerful statement of the public policy in favor of protecting this sort of information from

unnecessary disclosure.

Here, where the Patients are not parties and have not consented to the disclosure of their PII or HIPAA-protected information, the Court can, and indeed should, exercise its discretionary powers under Federal Rule of Bankruptcy Procedure 9037(c) to grant leave to Tecumseh to file the Binders under seal.

In compliance with Local Rule 9018, after the filing of this Motion, Tecumseh will deliver paper copies of the Binders proposed to be filed under seal to the Court and designate each for *in camera* review. As such, Tecumseh submits that entry of an order authorizing the filing of such documents under seal is appropriate.

IV. CONCLUSION

Based upon the foregoing, Tecumseh respectfully request that the Court enter an order,

...

...

...

...

...

...

...

...

1 substantially in the form attached hereto as **Exhibit B**, authorizing: (i) Tecumseh to file the Binders,
2 which have been identified as Exhibit I to the MPSJ, under seal; and (ii) granting any other relief
3 appropriate under the circumstances.

4 Dated this 2nd day of September, 2022.

5 Respectfully submitted,

6 GARMAN TURNER GORDON LLP

7 By: /s/Jared M. Sechrist
8 GERALD M. GORDON, ESQ.
9 WILLIAM M. NOALL, ESQ.
10 JARED M. SECHRIST, ESQ.
11 7251 Amigo St., Suite 210
12 Las Vegas, Nevada 89119

13 and

14 MICHAEL D. NAPOLI, ESQ.
15 *Pro hac vice*
16 AKERMAN LLP
17 2001 Ross Avenue, Suite 3600
18 Dallas, Texas 75201
19 Tel: (214) 720-4360 / Fax: (214) 720-8116

20 ARIEL E. STERN, ESQ.
21 Nevada Bar No. 8276
22 AKERMAN LLP
23 1635 Village Center Circle, Suite 200
24 Las Vegas, Nevada 89134
25 Tel: (702) 634-5000 / Fax: (702) 380-8572
26 Email: ariel.stern@akerman.com

27 *Attorneys for Tecumseh–Infinity Medical Receivable*
28 *Fund, LP*

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEV/ADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Exhibit A

Exhibit A

GARMAN TURNER GORDON LLP
GERALD M. GORDON
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
JARED M. SECHRIST
Nevada Bar No. 10439
E-mail: jsechrist@gtg.legal
7251 Amigo St., Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000 / Fax: (725) 777-3112

*Attorneys for Tecumseh–Infinity Medical
Receivable Fund, LP*

MICHAEL D. NAPOLI, ESQ.
Pro hac vice
AKERMAN LLP
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201
Tel: (214) 720-4360 / Fax: (214) 720-8116
Email: michael.napoli@akerman.com

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Tel: (702) 634-5000 / Fax: (702) 380-8572
Email: ariel.stern@akerman.com

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

INFINITY CAPITAL MANAGEMENT, INC.

Debtor.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Plaintiff,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Defendant.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Claimant,

v.

Case No.: 21-14486-abl
Chapter 7

Adversary Case No. 21-01167-abl

**DECLARATION OF MICHAEL D.
NAPOLI IN SUPPORT OF TECUMSEH–
INFINITY MEDICAL RECEIVABLE
FUND, LP MOTION TO FILE
DOCUMENTS UNDER SEAL**

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Defendant.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Claimant

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

**DECLARATION OF MICHAEL D. NAPOLI IN SUPPORT OF MOTION TO FILE
DOCUMENTS UNDER SEAL**

I, Michael D. Napoli, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Michael D. Napoli. I am over the age of twenty-one years, of sound mind, and fully competent to testify in this case. I have personal knowledge of the facts stated herein, all of which are true and correct.

2. I am a partner in the law firm of Akerman, LLP, counsel for party in interest Tecumseh–Infinity Medical Receivable Fund, LP, (“Tecumseh”) in the above-referenced case. I submit this declaration in support of Tecumseh’s Motion to File Documents Under Seal (the “Motion”) seeking leave to file under seal the binders (“Binders”) identified in Tecumseh’s Statement of Undisputed Facts [ECF No. 92] as Exhibit I submitted in support of its Motion for Partial Summary Judgment (“MPSJ”) as to Direct Purchase Receivables [ECF No. 90]. I have personal knowledge of the matters set forth herein. If called upon to testify as to the matters herein, I could and would do so.

3. On August 10, 2022, Infinity Capital Management, Inc. (“Debtor”) advised Tecumseh of the existence of five binders (“Binders”) containing, among other things, Healthcare Finance Administration forms (“HCFA Forms”) relating to the Patients. Tecumseh acquired the

1 Binders from Infinity shortly thereafter.

2 4. In addition to the HCFA Forms, the Binders contain documents with information
3 concerning the Patients' medical history and treatment.

4 I declare under the penalty of perjury of the laws of the United States of America that the
5 foregoing is true and correct.

6 Dated this 2nd day of September, 2022.

7
8 /s/Michael Napoli, Esq.
9 MICHAEL D. NAPOLI, ESQ.
10

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEV/ADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Exhibit B

Exhibit B

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

GARMAN TURNER GORDON LLP
GERALD M. GORDON
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
JARED M. SECHRIST
Nevada Bar No. 10439
E-mail: jsechrist@gtg.legal
7251 Amigo St., Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000 / Fax: (725) 777-3112

*Attorneys for Tecumseh–Infinity Medical
Receivable Fund, LP*

MICHAEL D. NAPOLI, ESQ.
Pro hac vice
AKERMAN LLP
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201
Tel: (214) 720-4360 / Fax: (214) 720-8116
Email: michael.napoli@akerman.com

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Tel: (702) 634-5000 / Fax: (702) 380-8572
Email: ariel.stern@akerman.com

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
INFINITY CAPITAL MANAGEMENT, INC.

Debtor.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Plaintiff,

v.

Case No.: 21-14486-abl
Chapter 7

Adversary Case No. 21-01167-abl

**ORDER GRANTING TECUMSEH–
INFINITY MEDICAL RECEIVABLE
FUND, LP’S MOTION TO FILE
DOCUMENTS UNDER SEAL**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEV/ADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Defendant.

HEARING DATE:
HEARING TIME:

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Claimant,

v.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Defendant.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Claimant

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

Tecumseh–Infinity Medical Receivable Fund, LP’s (“Tecumseh”), Motion to File Documents Under Seal¹ [Adv. ECF #] (the Motion), came on for hearing before the Court on September __, 2022.

Appearances were as noted in the record. All findings of fact and conclusions of law orally stated by the Court at the hearing are incorporated herein pursuant to Fed. R. Civ. P. 52, as made

...

...

¹ All capitalized terms take on the meaning ascribed to them in the Motion, unless otherwise defined herein.

applicable to these proceedings via Fed. R. Bankr. P. 6006, 7052 and 9014(c). For the reasons provided by the Court on the record at the hearing,

IT IS HEREBY ORDERED:

1. The Motion, and all of the relief sought therein, is granted in full.
2. Tecumseh shall file the Binders, which have been identified as Exhibit I to the MPSJ, under seal.

IT IS SO ORDERED.

MAGISTRATE JUDGE

PREPARED AND SUBMITTED:

GARMAN TURNER GORDON LLP

By: /s/Jared M. Sechrist
GERALD M. GORDON, ESQ.
JARED M. SECHRIST, ESQ.
7251 Amigo St., Suite 210
Las Vegas, Nevada 89119

and

AKERMAN LLP

/s/Michael Napoli, Esq.
ARIEL E. STERN, ESQ.
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

MICHAEL D. NAPOLI, ESQ.
PRO HAC VICE
2001 Ross Avenue, Suite 3600
Dallas, Texas 75201

*Attorneys for Tecumseh – Infinity Medical
Receivables Fund, L.P.*

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572